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Brisbane Australia

This is the author's version of a work that was submitted/accepted for publication in the following source:

[Fitzgerald, Anne M.](#) (2012) Juggling information policy, rights to information and copyright licensing to enhance the accessibility and reusability of spatial data : the Australian experience. In Janssen, Katleen & Crompvoets, Joep (Eds.) *Geographic Data and the Law : Defining New Challenges*. Leuven University Press, Leuven, Belgium.

This file was downloaded from: <http://eprints.qut.edu.au/54123/>

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Juggling Information Policy, Rights to Information and Copyright Licensing to Enhance the Accessibility and Reusability of Spatial Data: The Australian experience

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(updated version of chapter published in “Geographic Data and the Law: Defining New Challenges”, Katleen Janssen and Joep Crompvoets (eds), Leuven University Press, Belgium, 2012)

INTRODUCTION

There is still no comprehensive information strategy governing access to and reuse of public sector information, applying on a nationwide basis, across all levels of government – local, state and federal - in Australia. This is the case both for public sector materials generally and for spatial data in particular. Nevertheless, the last five years have seen some significant developments in information policy and practice, the result of which has been a considerable lessening of the barriers that previously acted to impede the accessibility and reusability of a great deal of spatial and other material held by public sector agencies. Much of the impetus for change has come from the spatial community which has for many years been a proponent of the view “that government held information, and in particular spatial information, will play an absolutely critical role in increasing the innovative capacity of this nation.”¹ However, the potential of government spatial data to contribute to innovation will remain unfulfilled without reform of policies on access and reuse as well as the pervasive practices of public sector data custodians who have relied on government copyright to justify the imposition of restrictive conditions on its use.

Breakthroughs were forged from 2005 on, catalysed in the context of an applied research collaboration between the Queensland Government² and legal academics at Queensland University of Technology (QUT)³ which was established to investigate policy, legal and economic issues relating to flows of spatial data. An early outcome of this project was the proposal for a Government Information Licensing Framework (GILF) to provide access to PSI under an open content copyright-based licensing regime applying the Creative Commons suite of licences to standardize the conditions for use and reuse of licensed materials.⁴ This approach is based on the recognition that reuse of public sector materials can be facilitated by

¹ Australian Spatial Consortium, *Submission to the Review of the National Innovation System*, submission no. 307, p 2, at http://www.innovation.gov.au/innovationreview/Documents/307-Australian_Spatial_Consortium.pdf

² The Queensland Government participation was led through the Queensland Treasury’s Office of Economic and Statistical Research (OESR) headed by Dr Peter Crossman. From 2007 to 2010 the project was funded by the Cooperative Research Centre for Spatial Information.

³ The QUT team was led by Professor Brian Fitzgerald and this author (Professor Anne Fitzgerald). Professor Brian Fitzgerald is also the project lead for Creative Commons, which he introduced into Australia in 2005. See <http://creativecommons.org.au>.

⁴ Queensland Government, Queensland Spatial Information Office, *Government Information and Open Content Licensing: An Access and Use Strategy* (2006), at <http://eprints.qut.edu.au/32117/1/Stage%202%20Final%20Report%20PDF%20Format.pdf>. Reprinted as Chapter 19 in B Fitzgerald (ed), “Access to Public Sector Information: Law, Technology and Policy”, Volume 2, University of Sydney Press, 2010, pp 352-453, at http://eprints.qut.edu.au/34085/5/PSI_Vol2Final_eversion_L.pdf

directly addressing the obstacles presented by the complex, protracted and restrictive licensing practices and procedures that are typically encountered.⁵ These insights rapidly gained widespread acceptance and influenced subsequent developments in policy and practice throughout Australia. In practice, the GILF project led to the use of Creative Commons licences, not only as an operational mechanism for managing government copyright but also – to the extent that they ensure at least a degree of reuse of licensed materials - an element of information policy. By releasing their materials under non-exclusive, open content licences, government agencies have adopted a policy position that, by default, materials made available for access will also be able to be used and reused (whether by members of the public or other governmental entities) with no - or few - restrictions.

Following the review of the national innovation system in 2008⁶ and the inquiry of the Government 2.0 Taskforce in 2009⁷, the federal government adopted a position on licensing of government materials which goes beyond that envisaged by GILF. Responding to the recommendations of Government 2.0 Taskforce in its report *Engage: Getting on with Government 2.0*⁸, the federal government accepted the proposal that the Creative Commons Attribution (CC BY) licence should be the default licence applied when government-owned copyright materials are released for distribution.⁹ Whereas the GILF model encompassed the entire suite of six Australian Creative Commons licences together with a model licence and template clauses for use when restrictive licensing conditions were to be imposed, the federal government's response to the Government 2.0 Taskforce's recommendations accepted that the only condition that would typically be applied is that the material is correctly attributed.

Contemporaneously, Freedom of Information (FoI) regimes introduced from the early 1980s onwards were being reformed to require governments to adopt pro-disclosure practices based on a "right to information" so that a much more extensive range of information is routinely and proactively released. Synergistically, the FoI reforms and adoption of Creative Commons licensing have led to the current position in which not only is a great deal more government information available for access than was previously the case but that it is, as a default, available for use and reuse, subject only to attribution requirements being met. The Australian experience has been that the adoption of open content licensing practices to overcome copyright-based restrictions has, in practice, enabled governments to improve the accessibility and reusability of their materials, in advance of the development of comprehensive and detailed information policy frameworks.

⁵ For a detailed analysis of the restrictions that are typically applied to government materials see Queensland Government, Queensland Spatial Information Office, *Government Information and Open Content Licensing: An Access and Use Strategy* (2006), available at <http://eprints.qut.edu.au/32117/1/Stage%20%20Final%20Report%20PDF%20Format.pdf>.

⁶ The review of the national innovation system, chaired by Dr Terry Cutler, was commissioned by the Minister for Innovation, Industry, Science and Research, Senator Kim Carr on 22 January 2008 and reported on 29 August 2008. See: Cutler & Company, *Venturous Australia - Building Strength in Innovation*, report on the Review of the National Innovation System, prepared for the Australian Government Department of Innovation, Industry, Science and Research, 29 August 2008, available at <http://www.innovation.gov.au/Innovation/Policy/Pages/ReviewoftheNationalInnovationSystem.aspx>.

⁷ The Government 2.0 Taskforce, chaired by Dr Nicholas Gruen, was established in July 2009 and reported in December 2009. See: Government 2.0 Taskforce (Chair Dr Nicholas Gruen), *Engage: Getting on with Government 2.0*, December 2009, at <http://gov2.net.au/index.html>.

⁸ Government 2.0 Taskforce (Chair Dr Nicholas Gruen), *Engage: Getting on with Government 2.0*, December 2009, at <http://www.finance.gov.au/publications/gov20taskforcereport/index.html>

⁹ Note that, unless otherwise indicated, references to Creative Commons licences refer to the Australian suite of Creative Commons licences. See <http://creativecommons.org.au>. For the Creative Commons Attribution 3.0 Australia (CC BY 3.0) licence see <http://creativecommons.org/licenses/by/3.0/au/deed.en>

TOWARDS A NATIONAL INFORMATION STRATEGY

By contrast with developments in the United States and Europe, until recently little attention has been given in Australia to the importance of developing information policy frameworks.

¹⁰ Early in the internet era, the advantages to be gained from reuse of government-held materials in new digital content and services was highlighted in the *Commerce in Content: Building Australia's International Future in Interactive Multimedia Markets* ¹¹, produced by Cutler & Company for the federal government in 1994. It made several recommendations as to how governments, at both federal and state level, could leverage “off their position as significant users, custodians, and producers of content” to accelerate the development of the digital content sector. ¹² The recommendations included providing easy access to culturally significant data in digital form, as well as providing comprehensive access to nationally significant data, and promoting the development of standards for document and image digitalisation and archiving. The extensive scale and variety of the cultural and content materials held by the public sector meant that “[i]n terms of scale, government initiatives would represent the biggest single catalyst for accelerated industry development.” ¹³ In the same year, the Australian Science and Technology Council's report, *The Networked Nation* ¹⁴, proposed that government should stimulate public interest in, and facilitate access to, government information via electronic networks.

Unfortunately the momentum dissipated and during the ensuing decade Australia lagged “behind many other advanced countries in establishing institutional frameworks to maximise the flow of government generated information and content”. ¹⁵ This period saw little activity on the development of data access and reuse policy frameworks, with some notable exceptions. Of particular note is the *Spatial Data Access and Pricing Policy* ¹⁶ adopted by the

¹⁰ For more detailed examination of the development of Australian policy on access to public sector information, see: A Fitzgerald, *Open Access Policies, Practices and Licensing: A review of the literature in Australia and selected jurisdictions*, QUT, July 2009, at <http://eprints.qut.edu.au/28026/>; B Fitzgerald (ed), “Access to Public Sector Information: Law, Technology and Policy”, University of Sydney Press, Sydney, 2010, available at <http://eprints.qut.edu.au/34085/>; A Fitzgerald, B Fitzgerald and N Hooper, *Enabling open access to public sector information with Creative Commons Licences: the Australian experience*, in “Access to Public Sector Information: Law, Technology and Policy”, B Fitzgerald (ed), Sydney University Press, Sydney, 2010, at <http://eprints.qut.edu.au/29773/>; A Fitzgerald, *Open access and public sector information: policy developments in Australia and key jurisdictions* in “Access to Public Sector Information: Law, Technology and Policy”, B Fitzgerald, Sydney University Press, Sydney, 2010, at: <http://eprints.qut.edu.au/31024/>. The various positions adopted by the federal and State governments in relation to access to and pricing of spatial data were examined and analysed in the report produced by PricewaterhouseCoopers for ANZLIC – The Spatial Information Council, *Economic Assessment of Spatial Data Pricing and Access – Stage 1 Report: Principles, Issues and Alternative Models*, November 2010, available at <http://www.anzlic.org.au/Latest+News/275.aspx>.

¹¹ R Buckeridge and T Cutler, *Commerce in Content: Building Australia's International Future in Interactive Multimedia Markets*, Report for the Department of Industry, Science and Technology, CSIRO and the Broadband Services Expert Group by Cutler & Company, September 1994, at <http://www.nla.gov.au/misc/cutler/cutlercp.html>.

¹² Ibid, Part 8: The role and contribution of government, at <http://www.nla.gov.au/misc/cutler/cutler8.html>.

¹³ Ibid

¹⁴ The National Library of Australia's submission to the Australian Science and Technology Council (ASTEC) is available online but *The Networked Nation* report or the government's response to it are not. See: *Submission to Australian Science & Technology Council Inquiry into Research Data Networks*, National Library of Australia, February 1994 at <http://www.nla.gov.au/policy/subastc2.html>

¹⁵ Cutler & Company, *Venturous Australia - Building Strength in Innovation*, report on the Review of the National Innovation System, prepared for the Australian Government Department of Innovation, Industry, Science and Research, 29 August 2008, p 94, at <http://www.innovation.gov.au/Innovation/Policy/Documents/NISReport.pdf>.

¹⁶ See Commonwealth Interdepartmental Committee on Spatial Data Access and Pricing, *A Proposal for a Commonwealth Spatial Data Access and Pricing Policy* (June 2001) <http://www-ext.osdm.gov.au/osdm/policy/accessPricing/SDAP.pdf> accessed on 22 May 2009 and generally <http://www.osdm.gov.au/OSDM/Policies+and+Guidelines/Spatial+Data+Access+and+Pricing/default.aspx> accessed on 22 May 2009.

federal government in 2001 which remains the most comprehensive data access and reuse policy developed in Australia to date and the only one applying on a national basis.

The last few years have seen a revival of interest in the potential of public sector information, and an examination of the issue in a series of inquiries commencing with the Cutler review of the national innovation system in 2008. The Cutler review's green paper report *Venturous Australia – Building Strength in Innovation* (Venturous Australia) recommended the development of a “National Information Strategy to optimise the flow of information in the Australian economy”¹⁷ the aims of which would include “maximis[ing] the flow of government generated information, research, and content for the benefit of users (including private sector resellers of information).”¹⁸ The federal government's response to the Venturous Australia report was generally supportive of its recommendations on access to PSI, accepting the need to build on initiatives already underway¹⁹ and “to develop a more coordinated approach to Commonwealth information management, innovation and engagement”.²⁰ At the same time, Australia endorsed the *Seoul Declaration on the Future of the Internet Economy*²¹ at the OECD Ministerial Meeting in June 2008. The Seoul Declaration incorporates key principles from the OECD's *Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information*²² (OECD PSI Recommendation) which forms part of the supporting materials annexed to the Declaration.²³ In the Declaration, the OECD member states undertake to:

Foster creativity in the development, use and application of the Internet, through policies that:

- Maintain an open environment that supports the free flow of information, research, innovation, entrepreneurship and business transformation.
- Make public sector information and content, including scientific data, and works of cultural heritage more widely accessible in digital format.²⁴

The Seoul Declaration and the OECD PSI Recommendation's principles (addressing matters such as openness, access, reuse conditions, copyright and pricing) have had considerable influence on thinking about PSI in Australia. Although not legally binding, OECD Recommendations have the status of OECD legal instruments that describe standards or objectives which OECD member countries) are expected to implement, and are regarded as having great moral force.

¹⁷ Recommendation 7.7, *Venturous Australia - Building Strength in Innovation*, report on the Review of the National Innovation System, Cutler & Company for the Australian Government Department of Innovation, Industry, Science and Research, 29 August 2008, at <http://www.innovation.gov.au/Innovation/Policy/Documents/NISChapter07.pdf>.

¹⁸ Ibid

¹⁹ In the Australian Bureau of Statistics, Geoscience Australia and the Bureau of Meteorology.

²⁰ *Powering Ideas: An Innovation Agenda for the 21st Century*, Department of Innovation, Industry, Science and Research, 12 May 2009, Chapter 6 (Public Sector Innovation), p 57, at http://www.innovation.gov.au/innovationreview/Documents/PoweringIdeas_fullreport.pdf.

²¹ OECD, *The Seoul Declaration for the Future of the Internet Economy* (18 June 2008), available at <http://www.oecd.org/dataoecd/49/28/40839436.pdf>.

²² OECD, *Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information*, C(2008) 36, Paris, 2008, at <http://www.oecd.org/dataoecd/0/27/40826024.pdf>

²³ OECD, *Shaping Policies for the Future of the Internet Economy*, Annexes, at <http://www.oecd.org/dataoecd/1/28/40821729.pdf>. The *Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information* is Annex F.

²⁴ OECD, *The Seoul Declaration for the Future of the Internet Economy* (18 June 2008), p 7, at <http://www.oecd.org/dataoecd/49/28/40839436.pdf>.

The insights and proposals in *Venturous Australia* and the *Seoul Declaration on the Future of the Internet Economy* were soon informing other inquiries into the role of information flows in innovation and the potential for government information to be utilised to better effect. The report of the Victorian Parliament's Economic Development and Infrastructure Committee (EDIC), *Inquiry into Improving Access to Victorian Public Sector Information and Data* (EDIC Report), was tabled in the Victorian Parliament in June 2009.²⁵ The Committee had been asked to report on the benefits and costs of maximising access to and use of PSI for commercial and non-commercial purposes and to consider how flexible licensing arrangements would facilitate reuse of PSI.²⁶ The key economic recommendation in the report was that the Victorian Government establish a comprehensive Information Management Framework (IMF), with open access to PSI at no or marginal cost as the default position and the development of specific guidelines to deliver that policy outcome.²⁷ The Committee's view was that the economic and social benefits arising from the release of Victorian Government information at no cost would far outweigh the benefits gained from treating it as a commodity.²⁸ The report of the federal government's Department of Broadband, Communications and the Digital Economy, *Australia's Digital Economy: Future Directions*, released in July 2009²⁹, recognised "the digital economy and innovation benefits generated by open access to public sector information, subject to issues such as privacy, national security and confidentiality".³⁰ Enabling open access to government materials was seen as a means of promoting innovation in both the public and private sectors.³¹

Progress towards the formation of an information strategy was boosted by the work of the Government 2.0 Taskforce (headed by Dr Nicholas Gruen) in 2009. The Taskforce's central recommendation (recommendation 1) was that, accompanying the federal government's policy response to the Taskforce's report, a declaration of open government should be made at the highest level, stating that:

- using technology to increase citizen engagement and collaboration in making policy and providing services will help achieve a more consultative, participatory and transparent government;

²⁵ Victorian Parliament, Economic Development and Infrastructure Committee, *Inquiry into Improving Access to Victorian Public Sector Information and Data* (EDIC Report), June 2009, at http://www.parliament.vic.gov.au/images/stories/committees/edic/access_to_PSI/EDIC_ACCESS_TO_PSI_REPORT_2009.pdf. The main recommendations are summarised in the accompanying media release, "21st Century Approach to Government Information: Committee calls for improved access to government information", Economic Development and Infrastructure Committee (24 June 2009): <http://www.parliament.vic.gov.au/edic/inquiries/article/1019>

²⁶ EDIC adopted a broad definition of PSI, but excluded software: EDIC Report, p 1, at http://www.parliament.vic.gov.au/images/stories/committees/edic/access_to_PSI/EDIC_ACCESS_TO_PSI_REPORT_2009.pdf.

²⁷ EDIC Report, Recommendation 16, at http://www.parliament.vic.gov.au/images/stories/committees/edic/access_to_PSI/EDIC_ACCESS_TO_PSI_REPORT_2009.pdf.

²⁸ EDIC Report, p 19, at http://www.parliament.vic.gov.au/images/stories/committees/edic/access_to_PSI/EDIC_ACCESS_TO_PSI_REPORT_2009.pdf.

²⁹ http://www.dbcde.gov.au/digital_economy/what_is_the_digital_economy/australias_digital_economy_future_directions

³⁰ Department of Broadband, Communications and the Digital Economy, *Australia's Digital Economy: Future Directions* (July 2009) p 12, at http://www.dbcde.gov.au/digital_economy/what_is_the_digital_economy/australias_digital_economy_future_directions/final_report

³¹ Department of Broadband, Communications and the Digital Economy, p 11, at http://www.dbcde.gov.au/digital_economy/what_is_the_digital_economy/australias_digital_economy_future_directions/final_report

- PSI is a national resource and that releasing as much of it on as permissive terms as possible will maximise its economic and social value to Australians and reinforce its contribution to a healthy democracy;
- online engagement by public servants, involving robust professional discussion as part of their duties or as private citizens, benefits their agencies, their professional development, those with whom they are engaged and the general public.³²

The Government 2.0 Taskforce also recommended the adoption of a general policy that public sector information should be “open, accessible and reusable” and should, by default, be:

- free
- based on open standards
- easily discoverable
- understandable
- machine-readable
- freely reusable and transformable.³³

These recommendations were accepted outright.³⁴ The government’s response expressly stated its commitment to the principles of openness and transparency and its intention to affirm those principles through a Declaration of Open Government.³⁵ On 16 July 2010 the (then) Minister for Finance and Deregulation, Lindsay Tanner, announced the Declaration of Open Government which acknowledges the importance of better access to and reuse of government held information and the innovative use of technology in achieving a more open, participatory and transparent democracy. The Declaration outlines three key principles underlying the government’s support for openness and transparency in government:

- **Informing:** strengthening citizen’s rights of access to information, establishing a pro-disclosure culture across Australian Government agencies including through online innovation, and making government information more accessible and usable;
- **Engaging:** collaborating with citizens on policy and service delivery to enhance the processes of government and improve the outcomes sought; and
- **Participating:** making government more consultative and participative.³⁶

³² Government 2.0 Taskforce, *Engage: Getting on with Government 2.0*, December 2009, recommendation 1, at <http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf>

³³ Government 2.0 Taskforce, *Engage: Getting on with Government 2.0*, December 2009, recommendation 6.1, at <http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf>

³⁴ Australian Government. *Government Response to the Report of the Government 2.0 Taskforce – “Engage: Getting on with Government 2.0”*, at <http://www.finance.gov.au/publications/govresponse20report/index.html>. See also the Victorian government’s response to the report of the Victorian Parliament’s Economic Development and Infrastructure Committee’s (EDIC) *Inquiry into Improving Access to Victorian Public Sector Information and Data*, February 2010. The Victorian Parliament’s EDIC recommendations were adopted August 2012, in the *Whole of Victorian Government Intellectual Property Policy: Intent and Principles*, August 2012, at <http://www.vic.gov.au/IPpolicy/wp-content/uploads/2012/08/Intellectual-Property-Policy-Intent-and-Principles-20-August-2012.pdf>, and the *DataVic Access Policy: Intent and Principles*, August 2012, at http://www.data.vic.gov.au/datasets/DataVic_Access_Policy_20_August_2012.pdf. Neither policy refers specifically to Creative Commons licences, but both support the granting of rights to State-owned intellectual property with the least restrictions possible; both policies are licensed under a Creative Commons Attribution 3.0 Australia licence.

³⁵ Federal government’s response to the Government 2.0 Taskforce’s report, *Engage: Getting on with Government 2.0*, 3 May 2010, at p 3, at <http://www.finance.gov.au/publications/govresponse20report/index.html>.

³⁶ *Declaration of Open Government*, Lindsay Tanner, Minister for Finance and Deregulation, issued 16 July 2010, at <http://agimo.govspace.gov.au/2010/07/16/declaration-of-open-government/>

Launching the Declaration of Open Government, Mr Tanner said that:

it acknowledges that the internet holds a crucial role in realising a more open and transparent form of government in this country. The Declaration is about making more government information available to the public online, and encouraging reuse of that information in new, valuable and potentially unexpected ways.³⁷

The default position of openness of PSI is reiterated in *Principles on open public sector information* developed by the Office of the Australian Information Commissioner through a process of public consultation and released in May 2011.³⁸ Principle 1 states that PSI held by federal government agencies “is a valuable national resource” which should be “open to public access” if there is no legal need to protect it.³⁹

FROM “FREEDOM OF INFORMATION” TO THE “RIGHT TO INFORMATION”

Much work has been done since the mid-2000s on overhauling and strengthening the Freedom of Information (FoI) schemes that were first introduced in Australia during the 1980s and 1990s.⁴⁰ The current phase of FoI reform activity commenced in 2007 when the Queensland government appointed the FoI Independent Review Panel (“Review Panel”), headed by Dr David Solomon⁴¹ to review that State’s FoI regime. Central to this phase of FoI reform is a shift from a “pull” model under which PSI is only disclosed in response to specific requests, to a “push” model whereby PSI is routinely and proactively made available for access and reuse.

Following publication of the Review Panel’s report *The Right to Information*⁴² in June 2008, the Queensland government responded⁴³ by enacting the *Right to Information Act 2009 (Qld)* to give effect to its recommendations. The primary object of the *Right to Information Act 2009 (Qld)* is to “give a right of access to information in the government’s possession or under the government’s control unless, on balance, it is contrary to the public interest” to provide access.⁴⁴ By enacting the *Right to Information Act 2009 (Qld)* the Queensland government sought to emphasise and promote the right to access government information⁴⁵, with PSI being released administratively as a matter of course, unless there are good reasons for withholding it, such that formal applications for release should only be necessary as a last

³⁷ Ibid.

³⁸ Australian Government. Office of the Australian Information Commissioner, *Principles on open public sector information*, May 2011, at http://www.oaic.gov.au/publications/agency_resources/principles_on_psi_short.html. The Principles are intended for use in monitoring compliance by federal government agencies with the *Freedom of Information Act 1982 (Cth)* but are not otherwise binding.

³⁹ Ibid.

⁴⁰ *Freedom of Information Act 1982 (Cth)*, *Freedom of Information Act 1989 (ACT)*, *Freedom of Information Act 1991 (Tas.)*, *Freedom of Information Act 1989 (N.S.W.)*, *Freedom of Information Act 1992 (Qld)*, *Freedom of Information Act 1991 (S.A.)*, *Freedom of Information Act 1982 (Vic.)*, *Freedom of Information Act 1992 (W.A.)*

⁴¹ The other members of the FOI Independent Review Panel were Simone Webbe and Dominic McGann. For further background to the review, see http://www.thepremier.qld.gov.au/initiatives/foi_review/index.aspx (accessed 22 May 2010).

⁴² David Solomon, Simone Webbe, Dominic McGann, *The Right to Information: Reviewing Queensland’s Freedom of Information Act*, Queensland Department of Justice and Attorney General, 10 June 2008, available at http://www.foireview.qld.gov.au/documents_for_download/FOI-review-report-10062008.pdf (accessed 22 May 2010).

⁴³ *The right to information – A response to the review of Queensland’s Freedom of Information Act*, 20 August 2008, available at http://www.thepremier.qld.gov.au/initiatives/foi_review/index.aspx (accessed 22 May 2010) and Press Release, Premier of Queensland, the Hon. Anna Bligh, *Public to gain greater access to Cabinet documents*, 20 August 2008 at <http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=59777> (accessed 22 May 2010).

⁴⁴ *Right to Information Act 2009 (Qld)*, s 3(1). See also the Preamble the Act, paragraph 3.

⁴⁵ *Right to Information Act 2009 (Qld)*, s 23.

resort.⁴⁶ Government agencies are required to publish a publication scheme setting out the classes of information available and the terms on which it is made available, including any charges.⁴⁷

The NSW government overhauled its FoI laws in 2009, enacting the *Government Information (Public Access) Act 2009* (“GIPA”)⁴⁸ and the *Government Information (Information Commissioner) Act 2009*. The GIPA authorises and encourages the proactive public release of government information, establishing a “presumption in favour of disclosure of government information unless there is an overriding public interest against disclosure”.⁴⁹ Under the public interest test, there will be an “overriding public interest against disclosure” only if there are public interest considerations against disclosure which, on balance, “outweigh the public interest consideration in favour of disclosure”.⁵⁰

The GIPA provides for release of government information in four sets of circumstances:⁵¹

- *Mandatory disclosure of open access information:* Agencies must publish certain information on their website, free of charge (s 6). “Open access information”, which must be published, consists of:
 - information about an agency’s policies, structure and functions;
 - documents tabled in Parliament on the agency’s behalf;
 - policy documents;
 - general details of unpublished open access information;
 - publication guide;
 - disclosure log;
 - register of government contracts (s 18).
- *Proactive release:* Agencies are encouraged to proactively release as much government information as possible, in an appropriate manner and free of charge or at the lowest reasonable cost (s 7(2)). Any government information can be proactively released, unless there is an overriding public interest against its disclosure (s 7(1)).
- *Informal release:* Agencies are encouraged to release information in response to a request without the need for a formal application, unless there are good reasons to require one (s 8).
- *Formal access application:* In limited circumstances, access to information will require a formal access application. There is a right to access information this way, unless the Act provides a reason to withhold the information (s 9).

⁴⁶ *Right to Information Act 2009* (Qld), Preamble, paragraph 2.

⁴⁷ *Right to Information Act 2009* (Qld), s 21.

⁴⁸ The *Government Information (Public Access) Act 2009* (NSW) entered into force on 1 July 2010.

⁴⁹ *Government Information (Public Access) Act 2009* (NSW), s 5.

⁵⁰ *Government Information (Public Access) Act 2009* (NSW), s 13.

⁵¹ A similar model has been adopted in the Tasmanian Right to Information Act 2009, which establishes the following four categories of disclosure of information: a required disclosure; a routine disclosure; an active disclosure; and an assessed disclosure (s 12(2)). The principal officer of a public authority is to ensure that adequate processes are in place to ensure that there is appropriate active disclosure, routine disclosure or required disclosure of information: s 12(3). An “assessed disclosure” is the method of disclosure of last resort: s 12(3).

On 13 May 2010, the federal Parliament enacted legislation that provides a new legal foundation for its policy of promoting greater openness and transparency in government, enacting the *Freedom of Information Amendment (Reform) Act 2010* and the *Information Commissioner Act 2010*. The amendments to the FoI legislation – the most significant refurbishment since the scheme was first introduced in 1982 – establish a default position of open access to PSI. The FoI Reform Act established a statutory framework for a pro-active publication scheme for PSI and introduced a single public interest test which favours disclosure. The *Principles on open public sector information* issued by the Office of the Australian Information Commissioner in May 2011 encourage federal agencies to apply a presumption of openness to the PSI they hold, to adopt a proactive publication stance to enhance public access and to use information technology to disseminate their information.⁵²

MANAGEMENT OF GOVERNMENT COPYRIGHT TO SUPPORT ACCESS AND REUSE

A vast range of materials produced by and for federal, State/Territory and local governments and their constituent departments and agencies – including spatial data - is subject to copyright. Under the *Copyright Act 1968* (Cth) with few exceptions government copyright is treated the same as copyright owned by non-government parties insofar as the range of protected materials and the exclusive proprietary rights attaching to them are concerned. However, the rationale for recognizing copyright in public sector materials and vesting ownership of copyright in governments is fundamentally different to the main rationales underpinning copyright generally. The central justification for recognizing Crown copyright is to ensure that government documents and materials created for public administrative purposes are disseminated in an accurate and reliable form. Consequently, the exclusive rights held by governments as copyright owners must be exercised in a manner consistent with the rationale for conferring copyright ownership on them. Since Crown copyright exists primarily to ensure that documents and materials produced for use in the conduct of government are circulated in an accurate and reliable form, governments should exercise their exclusive rights to ensure that their copyright materials are made available for access and reuse, in accordance with any laws and policies relating to access to public sector materials. While copyright law vests copyright owners with extensive bundles of exclusive rights which can be exercised to prevent others making use of the copyright material, in the case of Crown copyright materials these rights should rarely be asserted by government to deviate from the general rule that Crown copyright materials will be available for “full and free reproduction” by the community at large.

Ownership of copyright by government agencies is dealt with in Part VII of the *Copyright Act 1968* (the “Crown copyright” provisions).⁵³ The principal provisions on which government copyright is based are ss 176 – 179 of the *Copyright Act 1968*. Sections 176 and 178 provide that the government owns copyright in literary, dramatic, musical and artistic works, sound recordings and films “made by, or under the direction or control of the Commonwealth or a State”. Section 177 further provides that the government owns copyright in a literary, dramatic, musical or artistic work that is first published in Australia “by, or

⁵² Australian Government. Office of the Australian Information Commissioner, *Principles on open public sector information*, May 2011, Principle 1, at http://www.oaic.gov.au/publications/agency_resources/principles_on_psi_short.html.

⁵³ See generally, A Fitzgerald, B Fitzgerald and N Hooper (2010) *Enabling open access to public sector information with Creative Commons Licences: the Australian Experience*, in “Access to Public Sector Information: Law, Technology & Policy”, Sydney University Press: <http://eprints.qut.edu.au/29773/>; A Fitzgerald and K Pappalardo, (2009) “Report to the Government 2.0 Taskforce: Project 4 – Copyright Law and Intellectual Property”: <http://eprints.qut.edu.au/29416/>.

under the direction or control of, the Commonwealth or a State”.⁵⁴ The operation of ss 176-178 can be displaced by an agreement between the government and the person who created the copyright material that copyright is to belong to that person or some other party specified in the agreement.⁵⁵ The effect of these provisions is that governments own copyright in a vast range of materials in hard copy and digital form.

As the *Copyright Act 1968* does not generally differentiate between the rights of government as copyright owner and the rights of private parties who own copyright, governments enjoy the same range of exclusive rights in their copyright materials as private sector copyright owners.⁵⁶ One of the few points of difference between the rights of government and private sector copyright owners is that the duration of copyright for materials within the scope of ss 176 – 178 is 50 years from the end of the calendar year in which the copyright item is first published or is made.⁵⁷

Copyright endows rights owners with extensive exclusive rights that can be exercised to control the use and reuse of their materials, the fundamental rights being to:

- reproduce;
- publish;
- publicly perform;
- make an adaptation; and
- communicate the copyright work to the public in electronic form (eg on a website or as a digital file).⁵⁸

Other rights of copyright owners are the rights to ensure that electronic rights management information (ERMI) is not removed or altered and to prevent the circumvention of technological protection measures (TPM) they apply to their copyright materials to control access to or copying of it. ERMI is electronic information (including numbers or codes representing such information) which is either attached to or embodied in the copyright material, or appears in connection with a communication or the making available of the copyright material.⁵⁹ It typically includes information identifying the copyright work, its author or copyright owner or indicating the terms and conditions on which the material can be used, or that the use of the material is subject to terms or conditions of use. It is an infringement of the copyright owner’s rights to remove or alter ERMI relating to a copyright work or other subject matter without the permission of the copyright owner or exclusive licensee, if the person doing the act knows or ought reasonably to have known that the removal or alteration would induce, enable, facilitate or conceal an infringement of copyright.⁶⁰ In certain circumstances the removal or altering ERMI relating to a copyright work may be a criminal offence under the Copyright Act.⁶¹ The anti-circumvention

⁵⁴ Sections 176-178 are subject to any agreement between the Crown and the maker of the work or subject matter under which it is agreed that copyright is to belong to the author or maker or some other specified person (s 179).

⁵⁵ *Copyright Act 1968*, s 179

⁵⁶ Section 182 specifically states that, apart from the provisions in Part VII of the *Copyright Act 1968* (in ss 176-181) relating to the subsistence, duration and ownership of copyright, the provisions of Part III and Part IV of the Act apply.

⁵⁷ *Copyright Act 1968*, ss 180, 181

⁵⁸ *Copyright Act 1968*, ss 31, 85-88

⁵⁹ The main provisions dealing with ERMI are set out in Division 2A, Subdivision B of the *Copyright Act 1968*. Section 116D sets out the legal remedies (including an injunction or damages) available for the removal of and interference with ERMI.

⁶⁰ *Copyright Act 1968*, ss 116B-116D.

⁶¹ *Copyright Act 1968*, ss 132AQ-132AS.

provisions enable copyright owners to protect their materials by applying technical measures that control access to or copying of the work. It is an infringement to knowingly deal in devices designed to circumvent TPMs⁶² and, where the TPM controls access to a copyright work, it is an infringement to knowingly circumvent the TPM.⁶³

Rationale for government copyright ownership

Although the rights exercisable by governments as copyright owners under the provisions of the *Copyright Act 1968* are for most purposes identical to those of private parties, there are fundamental differences between government and private copyright. The *Copyright Act 1968* does not generally differentiate between public and private sector parties either with respect to the scope of materials in which copyright subsists or the exclusive rights that can be exercised in respect of them. However, it would be a mistake to assume that government copyright is exactly the same as copyright in non-government materials. Although statutory recognition of government copyright ownership was introduced into Australian copyright law in 1912 when the Copyright Act 1911 (UK) was adopted in Australia (No. 20 of 1912), the rationale for copyright in government materials is quite different from the reasons why copyright is recognized in materials produced by individual authors and private sector organizations.

An obvious point of difference is that, since many government materials (eg reports, legislation, handbooks) are created in the ordinary course of activities by parliament, the courts and government agencies, the traditional justification of copyright as providing an incentive to produce and disseminate new information is much less relevant than for works produced by publishers with the expectation of a commercial return.⁶⁴ In fact, discussion of government copyright is strikingly lacking in the usual rationales for recognition of copyright generally such as encouragement of innovation or enterprise for commercial benefit; reward of creative effort; maximizing commercial return through sale or licensing; and securing some advantage through the exercise of the exclusive rights.

The Copyright Law Review (CLRC) observed in the *Crown Copyright* report (2005) that works such as legislation and judgments “will be produced regardless of financial incentives, and therefore the traditional justification for copyright ownership does not apply”. Continued recognition of government copyright is justified by the “need to ensure the integrity and authenticity of official government publications”.⁶⁵ Ensuring that government materials are reproduced and distributed in an accurate and reliable form is a recurring theme in discussions about the existence and exercise of government copyright. Familiar phrases reappear: the need to ensure the authentic and accurate publication of documents, to be able to rely on the veracity and accuracy of government materials and to indicate the status and authority of government materials.

⁶² *Copyright Act 1968*, s 116AO(1)

⁶³ *Copyright Act 1968*, s 116AN(1)

⁶⁴ Copyright Law Review Committee (CLRC), *Crown Copyright*, 2005, para 4.23 at p38: <http://www.clrc.gov.au/www/agd/agd.nsf/Page/RWPBB79ED8E4858F514CA25735100827559>.

⁶⁵ See Copyright Law Review Committee, *Crown Copyright*, 2005 para 4.66 at p 53, available at <http://www.clrc.gov.au/www/agd/agd.nsf/Page/RWPBB79ED8E4858F514CA25735100827559>

Exercise of exclusive rights by governments

Although the same set of exclusive rights applies to the same materials, it was not intended that those rights would be exercised by governments in the same way as non-government copyright owners exercise their exclusive rights. Just as the rationale for government copyright ownership differs from that for private sector copyright, there is clear evidence that it was intended that government rights would be exercised primarily to ensure the distribution of government publications in a reliable form. Documents retrieved in archival research⁶⁶ show that the concept of Crown copyright in United Kingdom and Australian law was, at least from the time it was first codified in statutory form, inextricably linked with what would now be termed “open content” licensing practices. At the time the first Crown copyright provisions were enacted in the United Kingdom and Australia, it was explained that the Crown’s rights would be exercised to permit the “full and free reproduction” and widespread dissemination of the great bulk of government copyright materials.⁶⁷

There has been an ongoing tension between, on the one hand, adopting an open access approach and, on the other hand, focusing on cost recovery or generating commercial returns or rents. Over the years, many government agencies have, in reliance on their rights as copyright owners, imposed restrictions on the use and reuse of their materials, often to preserve commercial arrangements with licensees or resellers of materials supplied by government.⁶⁸ A report prepared by PricewaterhouseCoopers for ANZLIC in 2010 observes that, where spatial information is provided by government agencies at prices above marginal cost, restrictions are imposed on its distribution and reuse and royalties are payable for revenue obtained from the commercial use of the data.⁶⁹ For example, under the cost recovery default pricing approach for spatial data in Victoria, reuse is restricted and a royalty is payable on any commercial exploitation of data to sell new or value-added products and services that generate a revenue stream.⁷⁰ More liberal licensing practices are typically found when spatial data is provided at marginal cost pricing. Recent developments have seen a reversal of licensing practices based on government copyright ownership and the introduction of a default position that any government material that is available for access should be able to be used and reused, subject to proper attribution of its origin.

IMPLEMENTATION OF CREATIVE COMMONS LICENSING IN THE PUBLIC SECTOR

A striking feature of the Australian experience in moving towards greater accessibility and reusability of public sector materials generally – and spatial data specifically – is the extent to which government materials are being distributed under Creative Commons licences. The potential for the applicability of Creative Commons licences on government materials was

⁶⁶ This research has been conducted by John Gilchrist (University of Canberra) and Ben Atkinson (QUT).

⁶⁷ See B Atkinson, *The True History of Copyright: The Australian Experience 1905 – 2005*, Sydney University Press, 2007 at p 277; B Fitzgerald, A Fitzgerald et al, *Internet and E-Commerce Law, Business and Policy*, Thomson Reuters, Sydney, 2011 at pp 436-437.

⁶⁸ For a detailed examination of the kinds of restrictive clauses imposed by Queensland government agencies when licensing spatial data, see Queensland Government, Queensland Spatial Information Council, *Government Information and Open Content Licensing: An access and use strategy* (Government Information Licensing Framework Project Stage 2 Report), October 2006, available at <http://eprints.qut.edu.au/32117>

⁶⁹ ANZLIC – The Spatial Information Council, *Economic Assessment of Spatial Data Pricing and Access – Stage 1 Report: Principles, Issues and Alternative Models*, prepared by PricewaterhouseCoopers, November 2010, p 33, at <http://www.anzlic.org.au/Latest+News/275.aspx>

⁷⁰ Ibid, at pp 38 and 41.

first considered in a project initiated by the Queensland Spatial Information Council (QSIC) in 2004 to address long-standing dissatisfaction with the perceived limitations of the prevailing legal arrangements and practices for data access and sharing, both within government and between government and the private sector.⁷¹ Having seen the potential relevance of Creative Commons licences, from 2005 work proceeded collaboratively between QUT's Law Faculty (managers of the Australian Creative Commons project and licences), the Queensland Government's Office of Economic and Statistical Research (OESR)⁷² and the Department of Natural Resources and Water (now Department of Environment and Resource Management). This project, which developed the Creative Commons-based Government Information Licensing Framework (GILF) and investigated legal, policy and economic⁷³ aspects of access to PSI, provided input into the various reviews of this area and led the way towards the adoption of CC licensing in the government sector in Australia.

When Creative Commons launched in Australia in 2005, the advantages of open content licensing in the education sector were already appreciated⁷⁴ and there was a dawning awareness that a similar approach could play a role in facilitating access to government copyright materials.⁷⁵ Submissions to the Copyright Law Review Committee's inquiry into Crown Copyright (2004 – 2005) urged the Committee to go beyond simply considering whether an improved access regime required abolition of Crown copyright (entirely or in part) and to examine whether the objective could be attained by the adoption of more flexible, open, standardised licensing practices.⁷⁶ Immediately upon the launch of the Australian CC licences in 2005, spatial information professionals in the Queensland public sector who had been seeking to rationalise and streamline the licensing arrangements for spatial and statistical information turned their attention to the potential application of the new suite of licences in this context.⁷⁷

⁷¹ Initial consideration of the applicability of CC licences to government copyright materials occurred in response to a request to examine this issue from Tim Barker, (then) Assistant Government Statistician and Director, Queensland Spatial Information Office, Office of Economic and Statistical Research (OESR), Queensland Treasury, Graham McColm, Principal Advisor, Department of Natural Resources and Water, Queensland and Rob Bischoff.

⁷² The Office of Economic and Statistical Research (OESR) is in Queensland Treasury and throughout this time was managed by Dr Peter Crossman.

⁷³ See J Cook, *A summary view of government cost recovery policies in Australia and New Zealand relating to the supply of public sector information*, QUT ePrints Working Paper, April 2010, at <http://eprints.qut.edu.au/31609/> and J Cook, *Economic issues in funding and supplying public sector information*, QUT ePrints Working Paper, October 2009 at <http://eprints.qut.edu.au/27832/>

⁷⁴ The use of standardised licensing in the education sector in Australia had been pioneered by AShareNET. See further, B Fitzgerald, A Fitzgerald, M Perry, S Kiel-Chisholm, E Driscoll, D Thampapillai and J Coates, *Creating a Legal Framework for Copyright Management of Open Access within the Australia Academic and Research Sector* (OAK Law Report No 1), available at http://eprints.qut.edu.au/6099/1/Printed_Oak_Law_Project_Report.pdf; B Fitzgerald, *Open Content Licensing (OCL) for Open Educational Resources*, presented at the OECD Expert Meeting on Open Educational Resources, 6 and 7 February 2006, Malmo, Sweden, 2005, at <http://eprints.qut.edu.au/3621> <http://eprints.qut.edu.au/3621/>

⁷⁵ Digital Content Industry Strategic Industry Leaders Group, *Unlocking the Potential: Digital Content Industry Action Agenda Report*, March 2006, pp 29, 46, 62, at http://www.archive.dcita.gov.au/2007/12/unlocking_the_potential_digital_content_industry_action_agenda_report; S Cunningham, T Cutler, A Fitzgerald, Neale Hooper, Tom Cochrane, *Why Governments and Public Institutions Need to Understand Open Content Licensing* in B Fitzgerald, J Coates and S Lewis (eds) *Open Content Licensing: Cultivating the Creative Commons*, Sydney University Press, 2007, pp 74-92, at <http://eprints.qut.edu.au/6677/1/6677.pdf>.

⁷⁶ See the submission by Professor Brian Fitzgerald to the Copyright Law Review Committee at http://www.ag.gov.au/agd/WWW/clrHome.nsf/Page/Present_Inquiries_Crown_copyright_Submissions_2004_Sub_No_17_-_Professor_Brian_Fitzgerald

⁷⁷ For several years, these officers had been investigating ways of improving the flow of spatial information within the Queensland Government, and between the State and other levels of government and the private sector. They had recently viewed a video presentation by Professor Lawrence Lessig delivered at an event at QUT in 2004 to mark the launch of Creative Commons in Australia and immediately grasped the potential for CC licences to be applied towards achieving their objective of reducing impediments to the flow of spatial information.

From the outset, the principal focus of the project was the development of a standardised information licensing model for PSI which could be recommended for use with all kinds of government copyright materials to enable enhanced, seamless, on-demand access to PSI. The project sought to actively counteract the tendency towards licence proliferation, taking a strong view on the importance of a standardised approach and seeking to avoid the complexities that would inevitably re-occur if different government agencies and different jurisdictions insisted on developing individual licensing templates for access to and reuse of their copyright content. Significantly, the project did not directly address information policy or the development of principles for PSI access and reuse.

The report, *Government Information and Open Content Licensing: An Access and Use Strategy*⁷⁸ (“the Stage 2 report”), published in October 2006, identified the need for clear and succinct guiding principles for access, reuse and pricing and concluded that CC licences were the most the appropriate available open licences for use on PSI. It supported the introduction of a simplified system of open content licensing for the majority of the information made publicly available by the Queensland government and recommended:

- 2.1 That the Queensland Government establish a policy position that, while ensuring that confidential, security classified and private information collected and held by government continues to be appropriately protected, enables greater use and re use of other publicly available government data and facilitates data sharing arrangements.
- 2.2 That the Creative Commons open content licensing model be adopted by the Queensland Government to enable greater use of publicly available government data and to support data sharing arrangements.⁷⁹

By focusing attention on the importance of removing barriers to access to and reuse of PSI caused by inadequate or inappropriate licensing practices, the project’s findings and recommendations about the use of CC licences influenced reviews of information access policies and practices by the federal government,⁸⁰ other State governments,⁸¹ the New Zealand Government⁸² and the United Kingdom government.⁸³ Team members explained the CC-based licensing approach to federal and state agencies Australia-wide and urged renewed efforts to develop a national information framework. Having firstly attracted the interest of the Queensland government’s Chief Information Office, the project was ultimately reviewed and supported in principle by the Cross-Jurisdictional Chief Information Officers Committee

⁷⁸ Queensland Government, Queensland Spatial Information Council, *Government Information and Open Content Licensing: An access and use strategy* (Government Information Licensing Framework Project Stage 2 Report), October 2006, available at <http://eprints.qut.edu.au/32117/>.

⁷⁹ Ibid, pp 1-2.

⁸⁰ See Siu-Ming Tam, Australian Bureau of Statistics, *Informing the Nation – Open Access to Statistical Information in Australia*, Siu-Ming Tam, paper presented to the United Nations Economic Commission for Europe Work Session on the Communication and Dissemination of Statistics, Poland, May 2009, (2008) 25 *Statistical Journal of the IAOS* 145, at para 37; and *Venturous Australia – Building Strength in Innovation, Review of the National Innovation System*, 2008, available at <http://www.innovation.gov.au/Innovation/Policy/Documents/NISChapter07.pdf>.

⁸¹ Victorian Parliament, Economic Development and Infrastructure Committee, *Inquiry into Improving Access to Victorian Public Sector Information and Data*, June 2009, at http://www.parliament.vic.gov.au/images/stories/committees/edic/access_to_PSI/EDIC_ACCESS_TO_PSI_REPORT_2009.pdf.

⁸² The New Zealand Government Open Access and Licensing Framework (NZGOAL) uses the New Zealand Creative Commons licences. See: <http://www.e.govt.nz/guidance-and-resources/information-and-data/nzgoal> and <http://nzgoal.info/>.

⁸³ See *Power of Information Taskforce Report*, Richard Allan (chair), February 2009, pp 7 and 25, at http://www.epsiplus.net/psi_library/reports/country_specific_reports/united_kingdom/uk_power_of_information_review/power_of_information_taskforce_report

(CJCIOC) and received the endorsement of the Ministerial Online and Communications Council (OCC) in 2007.

By the time of the Cutler review of the national innovation system in 2008, the idea of using Creative Commons licences on public sector materials gaining broader acceptance throughout Australia. The *Venturous Australia* report (2008) recommended that “Australian governments should adopt international standards of open publishing as far as possible [and that] material released for public information by Australian governments should be released under a creative commons licence”.⁸⁴ At the State level, corresponding recommendations were made by Victorian Parliament’s Economic Development and Infrastructure Committee in its June 2009 report, *Inquiry into Improving Access to Victorian Public Sector Information and Data*, which recommended the adoption of the Creative Commons licences as the default licences for the proposed Information Management Framework.⁸⁵

The report of the Government 2.0 Taskforce, *Engage: Getting on with Government 2.0* (2009) recommended that “[c]onsistent with the need for free and open reuse and adaptation PSI should be licensed under the Creative Commons BY standard as the default”.⁸⁶ More restrictive licensing conditions should be applied only in special circumstances, in accordance with general guidance or specific advice provided by the Australian Information Commissioner.⁸⁷ The Taskforce proposed that the CC BY licence should be the default licence applied to PSI for which the government owns copyright, as well as PSI containing third party material, given that in the latter case it will be necessary to negotiate with the copyright owner/s in order to obtain permission to distribute the material under a CC licence.⁸⁸ Existing public sector materials that have already been published (such as government reports, legislation and publicly accessible records) could be relicensed under a CC BY licence, either on the initiative of the government or on request by individuals or organisations.⁸⁹ Each of these recommendations were accepted⁹⁰ and are being implemented by the federal government. To ensure that the federal government’s copyright management practices do not impede the application of CC BY as the default licensing option, the government directed the Attorney General’s Department to review its IP Guidelines.⁹¹

In October 2010 the Attorney General’s Department released an updated *Statement of IP Principles for Australian Government Agencies*, formally endorsing the Government 2.0 Taskforce’s recommendation that agencies should license their PSI under a CC BY licence as

⁸⁴ Recommendation 7.7, *Venturous Australia - Building Strength in Innovation*, report on the Review of the National Innovation System, Cutler & Company for the Australian Government Department of Innovation, Industry, Science and Research, 29 August 2008, at <http://www.innovation.gov.au/Innovation/Policy/Documents/NISChapter07.pdf>.

⁸⁵ Victorian Parliament, Economic Development and Infrastructure Committee, *Inquiry into Improving Access to Victorian Public Sector Information and Data* (EDIC Report), June 2009,, recommendation 14, at http://www.parliament.vic.gov.au/images/stories/committees/edic/access_to_PSI/EDIC_ACCESS_TO_PSI_REPORT_2009.pdf.

⁸⁶ *Engage: Getting on with Government 2.0*, Report of the Government 2.0 Taskforce (2009), recommendation 6.3, at <http://www.finance.gov.au/publications/gov20taskforcereport/chapter5.htm#a9>

⁸⁷ *Engage: Getting on with Government 2.0*, Report of the Government 2.0 Taskforce (2009), recommendation 6.4, at <http://www.finance.gov.au/publications/gov20taskforcereport/chapter5.htm#a9>

⁸⁸ *Engage: Getting on with Government 2.0*, Report of the Government 2.0 Taskforce (2009), recommendation 6.6, at <http://www.finance.gov.au/publications/gov20taskforcereport/chapter5.htm#a9>

⁸⁹ *Engage: Getting on with Government 2.0*, Report of the Government 2.0 Taskforce (2009), recommendation 6.5, at <http://www.finance.gov.au/publications/gov20taskforcereport/chapter5.htm#a9>

⁹⁰ *Government Response to the Report of the Government 2.0 Taskforce*, May 2010, at <http://www.finance.gov.au/publications/govresponse20report/doc/Government-Response-to-Gov-2-0-Report.pdf>

⁹¹ *Government Response to the Report of the Government 2.0 Taskforce*, May 2010, at <http://www.finance.gov.au/publications/govresponse20report/doc/Government-Response-to-Gov-2-0-Report.pdf>.

the default position and only adopt more restrictive licences after a process of "due diligence and on a case-by-case basis".⁹² The IP Principles state:

11.(b) Consistent with the need for free and open re-use and adaptation, public sector information should be licensed by agencies under the Creative Commons BY standard as the default.

An agency's starting position when determining how to license its public sector information should be to consider Creative Commons licences (<http://creativecommons.org.au/>) or other open content licences.

Agencies should license their public sector information under a Creative Commons licence or other open content licence following a process of due diligence and on a case-by-case basis.

Before releasing public sector information, for which the Commonwealth is not the sole copyright owner, under a Creative Commons BY standard or another open content licence, an agency may need to negotiate with any other copyright owners of the material.⁹³

Guidance on the operation of Principle 11(b) in the IP Principles is included in the *Australian Government Intellectual Property Manual* (IP Manual), a revised version of which was released in March 2012 to "reflect Government decisions relating to the promotion of Government 2.0 and the use of open content licensing".⁹⁴ The IP Manual makes it clear that the "Government's default position is that all public sector information be licensed under the most open and accessible licence available, which is the Creative Commons 'BY' (attribution) licence".⁹⁵ The IP Manual explains current Federal Government licensing practice:

Part of the Commonwealth's response [to the Government 2.0 Taskforce's report was] to make PSI available under the default Creative Commons BY licence (otherwise known as an attribution licence) which allows the greatest access to potential users. Agencies are now required to make licensing decisions about whether to use Creative Commons licences (or other open content licences) when publicly releasing their PSI. Australian Government agencies subject to the *Financial Management and Accountability Act 1997* (Cth) are expected to comply with this default, with [agencies subject to the Commonwealth Authorities and Companies Act 1997 (Cth)] asked to consider this position as an expression of good practice....

While the policy provides that the default or starting position is that PSI should be released free of charge under a Creative Commons 'BY' licence (the most liberal of the Creative Commons suite), agencies should only apply the Creative Commons 'BY', or other open content licence, to particular PSI following a process of due diligence on a case by case basis.

⁹² Attorney-General's Department, *Statement of IP Principles for Australian Government Agencies*, at http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_CommonwealthCopyrightAdministration_StatementofIPPrinciplesforAustralianGovernmentAgencies. See also the *Principles on open public sector information* published by the Office of the Australian Information Commissioner in May 2011 which acknowledge that the "economic and social value of PSI is enhanced when it is made available for reuse on open licensing terms" and specify that the default licence is CC BY: Australian Government, Office of the Australian Information Commissioner, *Principles on open public sector information*, May 2011, Principle 6: Clear reuse rights, at http://www.oaic.gov.au/publications/agency_resources/principles_on_psi_short.html.

⁹³ Attorney-General's Department, *Statement of IP Principles for Australian Government Agencies*, Principle 11(b): http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_CommonwealthCopyrightAdministration_StatementofIPPrinciplesforAustralianGovernmentAgencies

⁹⁴ Attorney-General's Department, *Australian Government Intellectual Property Manual*, version 2, March 2012, at <http://www.ag.gov.au/Intellectualproperty/Pages/IntellectualPropertyManual.aspx>.

⁹⁵ Attorney-General's Department, *Australian Government Intellectual Property Manual*, version 2, March 2012, p 192, at <http://www.ag.gov.au/Intellectualproperty/Pages/IntellectualPropertyManual.aspx>. See, similarly, pp 89, 183 and 184.

Agencies should be aware that for other forms of content, standard format licences are also available and may be used where an agency has determined that the Creative Commons 'BY' licence (or other Creative Commons licence) is not suitable for the particular material in question.

In some limited circumstances, agencies may also need to consider the use of a more restrictive, non-open content licence, which will further restrict permitted uses of the material, where it is genuinely necessary to do so in order to protect the material or the Commonwealth's interests.⁹⁶

Another of the Government 2.0 Taskforce's recommendations was that government copyright works held in official archives should be automatically licensed under a CC BY licence immediately upon becoming available for access by the public under the provisions of the *Archives Act 1983* (Cth).⁹⁷ The federal government accepted that, when Commonwealth records become available for public access under the *Archives Act 1983*, they should be automatically licensed under an appropriate open attribution licence, subject to the proviso that "the selection and use of an appropriate open attribution licence will remain the responsibility of agencies on a case-by-case basis".⁹⁸ In making the decision about which open attribution licence to apply, government agencies can use the licensing tool in GILF, which assists in the selection of Creative Commons licences.⁹⁹ The government's response to this recommendation has also been included in the revised *Statement of IP Principles for Australian Government Agencies* which state that "[a]t the time at which Commonwealth records become available for public access under the *Archives Act 1983*, public sector information covered by Crown copyright should be automatically licensed under an appropriate open content licence".¹⁰⁰

Importantly, in accepting the Government 2.0 Taskforce's recommendation that CC BY should be the default licence applied to government materials, the federal government has adopted a much more liberal position than that envisaged in the Queensland GILF project. As the Government 2.0 Taskforce chair Dr Nic Gruen emphasized, CC BY is a permissive licence "which allows complete freedom to reproduce, and remix subject only to the acknowledgement of the original source".¹⁰¹ However, the GILF licensing scheme encompassed the full suite of six Creative Commons licences (some of which contain additional conditions not found in the Attribution licence) as well as a specifically drafted template restrictive licence and model clauses, for use where further restrictions are to be imposed. The availability of this range of licences, particularly those constructed using the restrictive licence and template and model clauses, meant that GILF enabled a much greater range of restrictions to be imposed on government materials than what was envisaged by the Government 2.0 Taskforce.¹⁰²

⁹⁶ Attorney-General's Department, *Australian Government Intellectual Property Manual*, version 2, March 2012, pp 183-184, at <http://www.ag.gov.au/Intellectualproperty/Pages/IntellectualPropertyManual.aspx>.

⁹⁷ *Engage: Getting on with Government 2.0*, Report of the Government 2.0 Taskforce (2009), recommendation 6.7, at <http://www.finance.gov.au/publications/gov20taskforcereport/chapter5.htm#a9>

⁹⁸ *Government Response to the Report of the Government 2.0 Taskforce*, May 2010, at <http://www.finance.gov.au/publications/govresponse20report/doc/Government-Response-to-Gov-2-0-Report.pdf>

⁹⁹ Ibid.

¹⁰⁰ Attorney-General's Department, *Statement of IP Principles for Australian Government Agencies*, Principle 11(c): http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_CommonwealthCopyrightAdministration_StatementofIPPrinciplesforAustralianGovernmentAgencies.

¹⁰¹ Dr Nicholas Gruen, blog post, Government 2.0 Taskforce website, 5 May 2010 at <http://gov2.net.au/>

¹⁰² A similar more restrictive position was also accepted by the Victorian Parliament's Economic Development and Infrastructure Committee, which recommended that Creative Commons licences should be the default licences for the proposed Information Management Framework (recommendation 14). However, the committee also recommended (recommendation 15) that the Victorian government should adopt a hybrid licensing model for PSI, comprising the Creative

Even before the *Venturous Australia* Green Paper (2008) and the Government 2.0 Taskforce's inquiry (2009), key federal custodians of spatial data whose activities were subject to the *Spatial Data Access and Pricing Policy* (2001)¹⁰³ had already taken steps to provide improved access to their PSI. From the mid-2000s, Geoscience Australia, the Australian Bureau of Statistics and the Bureau of Meteorology had progressively removed restrictions to the accessibility and reusability of their materials and all had adopted Creative Commons Attribution licenses in 2008, more than 12 months before the Government 2.0 Taskforce published its licensing recommendations. These activities are subject to the *Spatial Data Access and Pricing Policy* which was adopted in 2001 and is administered by the Office of Spatial Data Management.¹⁰⁴ Fundamental spatial datasets identified in a Schedule to the policy are to be provided free of charge over the internet and at no more than the cost of delivery in the case of packaged products. Copyright in such data is maintained and reuse is permitted, subject to acknowledgement of copyright, and there are no restrictions on commercial use or value adding.

Geoscience Australia

Geoscience Australia (GA) was an early adopter of Creative Commons, being the first Australian government agency to apply the licences to its datasets in October 2008. Earlier that year, in response to requests from clients for easier access to GA's information products and clearer statements of the terms of use and reuse, GA undertook an analysis and internal trial of CC licences on a representative sample of its datasets to ascertain whether open content licensing would meet the organisation's desired operational outcomes.¹⁰⁵ Following successful completion of the CC licensing trial, in 2008 the Spatial Data Management Group, which had formed a Working Group to address the use of CC licensing, endorsed the use of CC licences for spatial data.¹⁰⁶ GA's Moderate Resolution Imaging Spectroradiometer (MODIS), the Australian Atlas of Mineral Resources,¹⁰⁷ the GeoMAP 250K dataset, digitised Bureau of Mineral Resources records and educational material about tsunami were among the first materials distributed under CC licences. In announcing its decision to apply CC licences to key mapping and other information products, GA emphasised that the use of the "easy to understand, royalty-free, modular, off the shelf [CC] licences" would make it easier for visitors to GA's website to use and access information. In November 2009, GA began licensing all the material on its own website and the OzCoasts website¹⁰⁸ (which it hosts)

Commons licences and a tailored suite of licences for restricted materials. See: Victorian Parliament, Economic Development and Infrastructure Committee, *Inquiry into Improving Access to Victorian Public Sector Information and Data* (EDIC Report), June 2009,, recommendation 14, at http://www.parliament.vic.gov.au/images/stories/committees/edic/access_to_PSI/EDIC_ACCESS_TO_PSI_REPORT_2009.pdf.

¹⁰³ See <http://www-ext.osdm.gov.au/osdm/policy/accessPricing/SDAP.pdf> and generally <http://www.osdm.gov.au/OSDM/Policies+and+Guidelines/Spatial+Data+Access+and+Pricing/default.aspx>.

¹⁰⁴ (A Proposal for a) Commonwealth Policy on Spatial Data Access and Pricing, June 2001, at <http://www.osdm.gov.au/osdm/policy/accessPricing/SDAP.pdf>.

¹⁰⁵ See the presentation by Jeff Kingwell, Geoscience Australia, at the Open Access and Research Conference, hosted by the Open Access to Knowledge Project (OAK Law), in Brisbane on 24-25 September 2008. See <http://www.oaklaw.qut.edu.au/node/61>.

¹⁰⁶ Australian Government, Office of Spatial Data Management, *Australian Government Spatial Data Activities 2009: A report of the Spatial Data Management Group*, 2010, p 5, at <http://www.osdm.gov.au/SDMG-AR=2009.pdf?ID=1043>.

¹⁰⁷ See the Atlas of Mineral Resources, Mines and Processing Centres (the "Australian Mines Atlas") at <http://www.australianminesatlas.gov.au>.

¹⁰⁸ See <http://www.ozcoasts.gov.au/>

under the Creative Commons Attribution 2.5 Australia licence (CC BY).¹⁰⁹ Following the launch of version 3.0 of the Australian Creative Commons licences in 2010, GA's website was updated to state that, unless otherwise noted, all GA material on the site is licensed under the Creative Commons Attribution 3.0 Australia licence (CC BY).¹¹⁰ During 2010, GA began releasing processed satellite data which shows change in tropical forest cover in South East Asia and is used to calculate the rate and impact of climate change, under CC licences.¹¹¹ In December 2010, a few weeks before the severe flooding throughout the eastern States, GA released digital elevation data which is available for free download under a CC BY licence on the beta National Elevation Data Framework portal.¹¹²

Australian Bureau of Statistics

In November 2005, the Australian Bureau of Statistics (ABS) abandoned the restrictive licensing practices it had previously applied in licensing its datasets, which had seen it charge fees for access to data and prohibit or restrict commercial downstream use by the licensee and/or others.¹¹³ Since then the ABS has eliminated virtually all charges for data and restrictions on downstream use (that is, access and reuse), whether commercial or otherwise.¹¹⁴ Following the removal of charges, the number of hits and downloads of ABS publications increased dramatically. Downloads of statistical publications increased from around 90,000 in 2000-01 to over 960,000 in 2004-05 and then to 4.5 million in 2006-07, the first full year of free downloads.¹¹⁵ The number of page views doubled from the end of 2005 to the end of 2007.¹¹⁶

¹⁰⁹ Note that some datasets such as MapConnect and GADDS could not be made available immediately under CC licences because the OSDM registration was embedded in these products.

¹¹⁰ See the Copyright statement on the GA website at <http://www.ga.gov.au/copyright.html>.

¹¹¹ Correspondence with Jeff Kingwell, Project Manager, SE Asia Satellite Data for IFCI Project, by email, 4 June 2010. GA has also encouraged its project collaborators to release their data under Creative Commons licences.

¹¹² See <http://nedf.ga.gov.au/geoportal/catalog/main/home.page>. Note that the three second and nine second elevation data are available under CC BY licences but the one second data is presently only available to public sector agencies and their contractors, due to defence security reasons.

¹¹³ Commencement of the use of the CC BY licence for ABS materials was accompanied by the following statement of purpose on the ABS website:

The Australian Bureau of Statistics (ABS) has introduced Creative Commons (CC) licensing for the bulk of the content on this website. This will lessen the restrictions on the use of free data from the website considerably by changing the copyright from "all rights reserved" to "some rights reserved". In effect, what the ABS is asking is only that it be acknowledged as the source of the data. People are free to reuse, build upon and distribute our data, even commercially. This makes a wealth of data readily available to the community, researchers and business, facilitating innovative research and development projects based on quality statistics, and promoting the wider use of statistics in the community, which is one of our core objectives. (http://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/8b2bdbc1d45a10b1ca25751d000d9b03?opendocument?utm_id=HPI)

¹¹⁴ Similar inhibitory outcomes from the adoption of restrictive licensing practices by government agencies were clearly identified in the 2001 Canadian report delivered by KPMG Consulting. The authors, in Recommendation 5 (at pp 24-25) identified the need to minimize the inhibiting impact of government agencies using restrictive licensing and copyright practices to prevent redistribution and the broader use of government geospatial data, in order to protect pricing policies. The authors pointed out this operational outcome was directly at odds with the stated government goals of maximising data use, with the identified resulting benefits. See Recommendation 5 in the Executive Summary at pp 24- 25, at http://www.geoconnections.org/programsCommittees/proCom_policy/keyDocs/KPMG/KPMG_E.pdf.

¹¹⁵ ANZLIC – The Spatial Information Council, *Economic Assessment of Spatial Data Pricing and Access – Stage 1 Report: Principles, Issues and Alternative Models*, report prepared by PricewaterhouseCoopers, November 2010, p 60, at <http://www.anzlic.org.au/Latest+News/275.aspx>

¹¹⁶ Siu-Ming Tam, Australian Bureau of Statistics, *Informing the Nation – Open Access to Statistical Information in Australia*, paper presented to the United Nations Economic Commission for Europe (UNECE) Work Session on the Communication and Dissemination of Statistics, Poland, May 2009, 2008 25 Statistical Journal of the IAOS 145, at paras 27 – 29 and 31.

Nevertheless, even after the relaxation of licensing practices in 2005, any significant redistribution of information obtained from the ABS website still had to be licensed by the ABS. Although the ABS allowed broad use of its website content, often at no cost, the licensing process itself was seen as potentially acting as a barrier to those wishing to reuse significant amounts of data. Following discussions with the open access community¹¹⁷ and relevant government departments, in mid-2008 ABS decided to make information on its website freely and openly available for access and reuse. This decision was consistent with ABS's philosophy of access to information, as well as recommendation 7.8 of the *Venturous Australia* Green Paper which urged Australian governments to adopt international standards of open publishing and the release materials for public information under a Creative Commons licence.¹¹⁸

On 18 December 2008, the ABS implemented CC licensing on its website and began making an extensive range of its statistical information products available online under a Creative Commons Attribution Australia licence. Implementation involved adding to the footer on every page of the ABS website an updated Copyright Statement, Disclaimer notice, CC symbols, information on how to attribute material sourced from the ABS website and a hyperlink to the CC licence. In effect, ABS makes its website material openly available, on condition that users acknowledge ABS as the source of the data.

Bureau of Meteorology

The *Water Act* 2007 (Cth) expanded the role of Bureau of Meteorology (BoM) to include management of water information, with the establishment of the Australian Water Resources Information System (AWRIS).¹¹⁹ BoM is required to collect water information from a range of sources and to disseminate it for widespread reuse, including by publishing a National Water Account and periodic reports on water resource use and availability.

To ensure that water information provided to BoM under the *Water Regulations* 2008 can be widely reused, BoM sought the support of the States and Territories for the adoption of a CC licensing framework for copyright-protected water datasets and databases.¹²⁰ BoM recommends that each of the 260 data suppliers that are obliged to provide information to it under the *Water Regulations* 2008 should apply CC licences – and, specifically, the Creative Commons Attribution (CC BY) – to all the data they provide to AWRIS, so that it can be reused by anyone on condition that the original data supplier is acknowledged.¹²¹ Almost all

¹¹⁷ Throughout this period, senior ABS officers consulted extensively with the Queensland Government-QUT project group that developed the Creative Commons-based Government Information Licensing Framework.

¹¹⁸ For the background to the ABS's adoption of CC licences, see Siu-Ming Tam, Australian Bureau of Statistics, *Informing the Nation – Open Access to Statistical Information in Australia*, paper presented to the United Nations Economic Commission for Europe (UNECE) Work Session on the Communication and Dissemination of Statistics, Poland, May 2009, (2008) 25 Statistical Journal of the IAOS 145, at paras 27 – 29 and 31. See also *Venturous Australia - Building Strength in Innovation*, report on the Review of the National Innovation System by Cutler & Company for the Australian Government Department of Innovation, Industry, Science and Research, 29 August 2008, at <http://www.innovation.gov.au/Innovation/Policy/Documents/NISChapter07.pdf>.

¹¹⁹ See: <http://www.bom.gov.au/waterjobs/awris.htm>.

¹²⁰ See www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/submissions/PSI_Sub_17_Bureau_Meteorology.pdf.

¹²¹ See <http://www.bom.gov.au/water/regulations/dataLicensing/ccLicense.shtml>. See also, Australian Government, Office of Spatial Data Management, *Australian Government Spatial Data Activities 2009: A report of the Spatial Data Management Group*, 2010, at p 12, available at <http://www.osdm.gov.au/SDMG-AR=2009.pdf?ID=1043>

data suppliers are now applying Creative Commons licences when providing their reports to BoM.¹²²

Australian Ocean Data Network

The Australian Ocean Data Network (AODN) is a program supported by the Australian Ocean Data Centre Joint Facility (AODCJF)¹²³, a joint venture between the six federal government agencies with primary responsibility for marine data. It was established with the intention that it would be Australia's digital oceans data commons, increasing the discoverability, availability, accessibility and reusability of marine data in the Australian marine region. The AODN does not generate any data itself but operates as a federated system in which data and metadata stored with the originating organisations are harvested by the AODN metadata store. It includes both publicly funded marine data contributed by the AODCJF agencies and data from private industry and not-for-profit organisations. A condition of participation in the AODN is that all data is contributed on an unencumbered basis so that it can be made freely accessible on the internet at no charge to users. Data contributed to the AODN continues to be owned by each provider and the AODN's role is to publish information about it and provide direct access to the data. To ensure that the data will be publicly accessible and reusable, the AODN recommends that contributors provide it under an open content licence such as the Creative Commons Attribution licence.¹²⁴

data.vic.gov.au and AppMyState

In 2010 the Victorian government ran the AppMyState competition¹²⁵, which focused on mobile and web applications. For the competition, the government set up the data.vic.gov.au portal where raw datasets and data tools could be accessed. The 100 or so datasets contributed for the competition by Victorian government agencies were available for direct download, under a Creative Commons Attribution (CC BY) licence, unless otherwise specified.¹²⁶ The Department of Sustainability and Environment, the custodian of much Victorian spatial information contributed data about railway lines, waterways and postcode boundaries to AppMyState in KML format.¹²⁷

CONCLUSION

The importance of ensuring the accessibility and reusability of government information – including spatial data – is now widely acknowledged in Australia. Reforms and revisions of Freedom of Information laws which recognise enhanced rights to obtain access to information have combined with the adoption of open licensing practices so that an extended range of government materials is now accessible, in a form that permits use and reuse. The

¹²² By 2009 the “vast majority of data suppliers” had agreed to supply their data under Creative Commons licences. See: Australian Government, Office of Spatial Data Management, *Australian Government Spatial Data Activities 2009: A report of the Spatial Data Management Group*, 2010, p 22, at <http://www.osdm.gov.au/SDMG-AR=2009.pdf?ID=1043>

¹²³ See <http://www.aodc.org.au>

¹²⁴ Australian Ocean Data Network, *AODN Data Policy* (version 1.0), prepared by A Mosbauer, April 2011, at http://imos.org.au/fileadmin/user_upload/shared/AODN/AODN_data_policy_v1.pdf

¹²⁵ See <http://www.premier.vic.gov.au/app-my-state.html>. Entries closed on 21 May 2010 and the winners were announced by the Victorian Premier, John Brumby MP, on 21 June 2010; see <http://www.premier.vic.gov.au/app-my-state/the-winners.html>.

¹²⁶ See the Copyright page at <http://data.vic.gov.au/cms/copyright/39>

¹²⁷ See Blog post “Data accessibility”, posted by Information Victoria, 5 March 2010, at <http://data.vic.gov.au/blog/data-accessibility/159>

federal government's commitment to greater accessibility and reusability is evidenced in the Declaration of Open Government (July 2010) which clearly states the objective of pursuing an open, transparent and participatory democracy, "built on better access to and use of government held information, and sustained by the innovative use of technology".

The acceptance by the federal government of the Government 2.0 Taskforce's recommendation that CC BY should be default copyright licence for government materials provides a strong indication of its understanding that it is not sufficient to merely provide access but that materials should be available for use and reuse, with as few restrictions as possible. Governments across Australia have taken significant steps in developing the framework of laws, policies and information management practices required to give effect to this objective. Despite this progress, in a federation consisting of a national government, eight States and Territories and a myriad of local government authorities there are real challenges in developing a truly national framework that enables information to flow within and among the various levels of government, as well as between government and private individuals and organisations. The need for intergovernmental cooperation to develop and implement a national information policy was recognised in the Government 2.0 Taskforce report *Engage: Getting on with Government 2.0*, which recommended that effort should be put into developing a national information policy, through the Council of Australian Governments (COAG) on which each of the jurisdictions is represented.¹²⁸ The challenge ahead, in further developing the legal, policy and practice framework for access to and reuse of PSI, is to proceed on the basis that PSI is indeed a national resource and to develop strategies designed to ensure that its social and economic benefit is maximised.

¹²⁸ *Engage: Getting on with Government 2.0*, Report of the Government 2.0 Taskforce (2009), recommendation 6.9, at <http://www.finance.gov.au/publications/gov20taskforcereport/chapter5.htm#a9>